THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
and
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 7821 of 1996

O R D E R: (Per the Hon'ble Sri Justice G. Chandraiah)

This writ petition is filed challenging Rules 153.8 and 143.2 of Railway Protection Force Rules 1987 and the Charge Sheet No.B/XP.227/153/96 dated 9.2.1996.

Heard the learned counsel for the parties and perused the material available on record.

The case of the petitioner is that he was originally appointed as Constable in R.P.F. and later promoted as Naik and Head Constable. While he was working as Head Constable in the office of Inspector, Railway Protection Force, Upyard, Vijayawada, he was placed under suspension on 13.1.1996 by respondent No.4 vide Memorandum No.B/XP.654/SKK/HC/721/YY/96 dated 13.1.1996. Prior to suspension, he was working at Bhimavaram as Head Constable and he was transferred to Vijayawada Upyard by respondent No.3 vide Divisional Order No.1/96 dated 7.1.1996 with a direction that he should be relieved immediately and no joining time would be given. The case of the petitioner is that the reason behind his transfer to Vijayawada from Bhimavaram without joining time and immediate suspension on 13.1.1996 is motivated and biased as he reported to I Town Police Station, Bhimavaram against K. Amarnath Kumar, Sub-Inspector, R.P.F., Bhimavaram under whom he was working. The petitioner further states that on 9.2.1996 the respondent No.4 issued the impugned charge sheet. Six witnesses for

prosecution are cited in the charge sheet besides relying upon 11 documents and respondent No.5 has been appointed as the Enquiry Officer. The grievance of the petitioner is that he has no experience in conducting departmental enquiry and cross-examining the prosecution witnesses and he cannot effectively defend himself in the enquiry without assistance of a defence helper, but Rule 153.8 stipulates that the defence helper (designated as 'friend') should not be permitted to address as Enquiry Officer and the Defence Helper (friend) is also prohibited from putting questions to the prosecution witnesses in the enquiry.

The contention of the learned counsel for the petitioner is that the petitioner has no knowledge or experience in dealing with departmental enquiry and therefore he sought for the assistance of defence helper (friend) for cross-examining the witnesses. However, taking advantage of Rule 153.8 the respondents are not permitting the petitioner to take the assistance of friend which is not only violation of principles of natural justice but also contrary to law. In support of his argument, learned counsel for the petitioner produced copy of judgment of a Full Bench of this Court in W.A. No. 1397 of 1998 dated 7.9.2001 wherein the Full Bench held:

> "As by reason of the said provision a right of cross-examination and right to make submission are denied to a friend which is a valuable right, in our opinion, such provision must be held to be unreasonable. Even if Rules 153 (8) and 153 (10) of the Rules are read conjointly, as suggested by Mr. Murthy, still then the right of the friend cross-examining and making submissions does not exist. That part of Rule 153 (8) of the Rules whereby and whereunder a friend shall not be allowed to address the inquiry

officer nor to cross-examine the witnesses is declared unconstitutional.

For the reasons aforementioned the writ appeal is allowed and the respondents are hereby directed to allow the friend of the petitioner to cross-examine the witnesses examined on behalf of the department and make submissions on his behalf".

Though the petitioner has sought for declaring Rule 143.2 of RPF Rules, 1987 as unconstitutional, in the light of the above referred judgment, learned counsel for the petitioner confined his submissions with regard to Rule 153.8 of the Rules. Therefore, we are not going into the validity of Rule 143.2 of the Rules.

Learned standing counsel appearing for the respondents also agreed that in the abovementioned judgment that part of Rule 153(8) of the Rules whereby and whereunder a friend shall not be allowed to address the inquiry officer nor to cross-examine the witnesses is declared unconstitutional by a Full Bench of this Court.

Having regard to the fact that a Full Bench of this Court in W.A. 1397 of 1998 has declared that part of Rule 153 (8) of the Rules whereby and whereunder a friend shall not be allowed to address the inquiry officer nor to cross-examine the witnesses as unconstitutional, following the said judgment this writ petition is disposed of directing the respondents to allow the friend of the petitioner to cross-examine the witnesses examined on behalf of the department and make submissions on his behalf. In the facts and circumstances of the case, there shall be no order as to costs.

T. MEENA KUMARI, J.

G. CHANDRAIAH, J.

Date: 10-10-2007.

MVB.